all steps necessary to secure the funds for any such purpose or purposes. When the funds are so secured, or the bonds therefor have been authorized by the proper municipal authority, such funds shall be considered as in the treasury and appropriated for such particular purpose or purposes, and shall not be used for any other purpose. The bonds authorized to be issued for any such purpose or purposes shall not exceed 3 per cent of the total value of all property in any city or village, as listed and assessed for taxation, and may be in addition to the total bonded indebtedness of such city or village otherwise permitted by law. The question of the issuance of such bonds shall not be required to be submitted to a vote of the electors.

SEC. 1259–1. Interest and sinking-fund levies on account of bonds issued under section 1259 of the General Code, in compliance with orders of the State commissioner of health, shall be exempt from all the limitations on tax levies provided by sections 5649–2 and 5649–3a of the General Code. Such levies shall also be exempt from the limitation provided by section 5649–5b of the General Code, if the question of making such additional levy shall be submitted to the electors of the municipality issuing, or proceeding to issue, such bonds in the manner provided in sections 5649–5 and 5649–5a of the General Code, and the same is approved by a majority of the electors voting on such question; and the proper legislative authorities of any such municipal corporation are hereby authorized to submit such question in the manner provided in said sections of the General Code at any regular election or at a special election. The number of years for which such levy shall be authorized shall not be required to be printed on the ballot, and the approval of the electors shall constitute sufficient authority for the making of such additional levy annually, during the time for which the bonds are to to run, or until the same are redeemed, or the redemption thereof with interest is fully provided for.

SEC. 1260. If a council, department, or officer of a municipality, or person, partnership, or private corporation fails or refuses for a period of 30 days, after notice given him or them by the commissioner of health of his findings and order and the approval thereof by the public-health council, to perform any act or acts required of him or them by this chapter relating to stream pollution and public water supply, the members of such council or department, or such officer or officers, person, partnership, or private corporation shall be personally liable for such default, and shall forfeit and pay to the State of Ohio $500, to be paid into the State treasury to the credit of the general revenue fund.

SEC. 1261. An action may be begun for the recovery of such penalty by the prosecuting attorney of a county in the name of the State in the court of common pleas of such county having jurisdiction of any such party or parties, or it may be begun by the attorney general in such county or the county of Franklin, as provided by law. The court of common pleas, upon good cause shown, may, at its discretion, remit such penalty or any part thereof.

DECISIONS OF UNITED STATES SUPREME COURT CONSTRUING HARRISON NARCOTIC ACT.

The following are decisions of the United States Supreme Court construing the Harrison Narcotic Act:

Mr. Chief Justice TAFT delivered the opinion [1] of the court:

This is a writ of error to the district court under the criminal appeals act of March 2, 1907 (34 Stat. 1246). Defendants in error were indicted for a violation of the narcotic act of December 17, 1914 (38 Stat. 786). The indictment charged them with unlawfully selling to another a certain amount of a derivative of opium and a certain amount of a derivative of coca leaves, not in pursuance of any written order on a form issued in blank for that purpose by the Commissioner of Internal Revenue, contrary to the provisions of section 2 of the act. The defendants demurred to the indictment on the ground that it failed to charge that they had sold the inhibited drugs knowing

[1] United States *v.* Balint et al.

them to be such. The statute does not make such knowledge an element of the offense. The district court sustained the demurrer and quashed the indictment. The correctness of this ruling is the question before us.

While the general rule at common law was that the scienter was a necessary element in the indictment and proof of every crime, and this was followed in regard to statutory crimes, even where the statutory definition did not in terms include it (Rex *v.* Sleep, 8 Cox, 472), there has been a modification of this view in respect to prosecutions under statutes the purpose of which would be obstructed by such requirement. It is a question of legislative intent to be construed by the court. It has been objected that punishment of a person for an act in violation of law when ignorant of the facts making it so is an absence of due process of law. But that objection is considered and overruled in Shevlin-Carpenter Co. *v.* Minnesota (218 U. S. 57, 69, 70), in which it was held that in the prohibition or punishment of particular acts the State may in the maintenance of a public policy provide "that he who shall do them shall do them at his peril and will not be heard to plead in defense good faith or ignorance." Many instances of this are to be found in regulatory measures in the exercise of what is called the police power where the emphasis of the statute is evidently upon achievement of some social betterment rather than the punishment of the crimes, as in the cases of mala in se.—Commonwealth *v.* Mixer (207 Mass. 141); Commonwealth *v.* Smith (166 Mass. 370); Commonwealth *v.* Hallett (103 Mass. 452); People *v.* Kibler (106 N. Y. 321); State *v.* Kinkead (57 Conn. 173); McCutcheon *v.* People (79 Ill. 601); State *v.* Thompson (74 Iowa, 119); United States *v.* Leathers (1 Sawy. 1); United States *v.* Thompson (12 Fed. 245); United States *v.* Mayfield (177 Fed. 765); United States *v.* Thirty-six Bottles of Gin (210 Fed. 271); Feeley *v.* United States (236 Fed. 903); Toves *v.* United States (249 Fed. 191). So, too, in the collection of taxes the importance to the public of their collection leads the legislature to impose on the taxpayer the burden of finding out the facts upon which his liability to pay depends and meeting it at the peril of punishment.—Regina *v.* Woodrow (15 M. & W. 404); Bruhn *v.* Rex (1909 A. C. 317). Again, where one deals with others and his mere negligence may be dangerous to them, as in selling diseased food or poison, the policy of the law may, in order to stimulate proper care, require the punishment of the negligent person, though he be ignorant of the noxious character of what he sells.—Hobbs *v.* Winchester Corporation (2 K. B. Div. 471, 483).

The question before us, therefore, is one of the construction of the statute and of inference of the intent of Congress. The narcotic act has been held by this court to be a taxing act with the incidental purpose of minimizing the spread of addiction to the use of poisonous and demoralizing drugs.—United States *v.* Doremus (249 U. S. 86, 94); United States *v.* Jin Fuey Moy (241 U. S. 86, 94).

Section 2 of the narcotic act (38 Stat. 786) we give in part in the margin.[1] It is very evident from a reading of it that the emphasis of the section is in securing a

[1] Part of sec. 2 of an act entitled "An act to provide for the registration of, with collectors of internal revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, or preparations, and for other purposes," approved Dec. 17, 1914 (38 Stat. 785, 786).

SEC. 2. That it shall be unlawful for any person to sell, barter, exchange, or give away any of the aforesaid drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue. Every person who shall accept any such order and in pursuance thereof shall sell, barter, exchange, or give away any of the aforesaid drugs shall preserve such order for a period of two years in such a way as to be readily accessible to inspection by any officer, agent, or employee of the Treasury Department duly authorized for that purpose, and the State, Territorial, District, municipal, and insular officials named in section 5 of this act. Every person who shall give an order as herein provided to any other person for any of the aforesaid drugs shall, at or before the time of giving such order, make or cause to be made a duplicate thereof on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue and in case of the acceptance of such order shall preserve such duplicate for said period of two years in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials hereinbefore mentioned.

close supervision of the business of dealing in these dangerous drugs by the taxing officers of the Government and that it merely uses a criminal penalty to secure recorded evidence of the disposition of such drugs as a means of taxing and restraining the traffic. Its manifest purpose is to require every person dealing in drugs to ascertain at his peril whether that which he sells comes within the inhibition of the statute, and if he sells the inhibited drug in ignorance of its character, to penalize him. Congress weighed the possible injustice of subjecting an innocent seller to a penalty against the evil of exposing innocent purchasers to danger from the drug, and concluded that the latter was the result preferably to be avoided. Doubtless considerations as to the opportunity of the seller to find out the fact and the difficulty of proof of knowledge contributed to this conclusion. We think the demurrer to the indictment should have been overruled.

Judgment reversed.

Mr. Justice CLARKE took no part in this decision.

Mr. Justice DAY delivered the opinion[1] of the court:

This case is here under the criminal appeals act (34 Stat. 1246). The statute involved is the narcotic drug act of December 17, 1914 (ch. 1, sec. 2 (*a*); 38 Stat. 785, 786).

This statute in section 2, subdivision (*a*), makes it an offense to sell, barter, exchange, or give away any of the narcotic drugs named in the act except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue. It is further provided that nothing in the section shall apply to the dispensing or distribution of any of the drugs to a patient of a registered physician in the course of his professional practice only, or to the sale, dispensing, or distribution of said drugs by a dealer to a consumer in pursuance of a written prescription issued by a physician registered under the act.

The indictment charges that the defendant did unlawfully sell, barter, and give to Willie King a compound, manufacture, and derivative of opium, to wit, 150 grains of heroin and 360 grains of morphine, and a compound, manufacture, and derivative of coca leaves, to wit, 210 grains of cocaine, not in purusance of any written order of King on a form issued for that purpose by the Commisioner of Internal Revenue of the United States; that the defendant was a duly licensed physician and registered under the act, and issued three written orders to the said King in the form of prescriptions signed by him, which prescriptions called for the delivery to King of the amount of drugs above described; that the defendant intended that King should obtain the drugs from the druggist upon the said orders; that King did obtain upon said orders drugs of the amount and kind above described pursuant to the said prescriptions; that King was a person addicted to the habitual use of morphine, heroin, and cocaine, and known by the defendant to be so addicted; that King did not require the administration of either morphine, heroin, or cocaine by reason of any disease other than such addiction; that defendant did not dispense any of the drugs for the purpose of treating any disease or condition other than such addiction; that none of the drugs so dispensed by the defendant was administered to or intended by the defendant to be administered to King by the defendant or any nurse, or person acting under the direction of the defendant; nor were any of the drugs consumed or intended to be consumed by King in the presence of the defendant, but that all of the drugs were put in the possession or control of King with the intention on the part of the defendant that King would use the same by self-administration in divided doses over a period of several days, the amount of each of said drugs dispensed being more

[1] United States *v.* Behrman.

than sufficient or necessary to satisfy the craving of King therefor if consumed by him all at one time; that King was not in any way restrained or prevented from disposing of the drugs in any manner he saw fit; and that the drugs so dispensed by the defendant were in the form in which said drugs are usually consumed by persons addicted to the habitual use thereof to satisfy their craving therefor, and were adapted for such consumption.

The question is: Do the acts charged in this indictment constitute an offense within the meaning of the statute? As we have seen, the statute contains an exception to the effect that it shall not apply to the dispensing or distribution of such drugs to a patient by a registered physician in the course of his professional practice only, nor to the sale, dispensing, or distribution of the drugs by a dealer to a consumer under a written prescription by a registered physician. The rule applicable to such statutes is that it is enough to charge facts sufficient to show that the accused is not within the exception.—United States *v.* Cook (17 Wall. 168, 173).

The district judge who heard this case was of the opinion that prescriptions in the regular course of practice did not include the indiscriminate doling out of narcotics in such quantity to addicts as charged in the indictment, but out of deference to what he deemed to be the view of a local district judge in another case announced his willingness to follow such opinion until the question could be passed upon by this court, and sustained the demurrer. In our opinion the district judge who heard the case was right in his conclusion and should have overruled the demurrer

Former decisions of this court have held that the purpose of the exception is to confine the distribution of these drugs to the regular and lawful course of professional practice, and that not everything called a prescription is necessarily such.—Webb *v.* United States (249 U. S. 96); Jin Fuey Moy *v.* United States (254 U. S. 189). Of this phase of the act this court said in the Jin Fuey Moy case, page 194:

> Manifestly the phrases "to a patient" and "in the course of his professional practice only" are intended to confine the immunity of a registered physician, in dispensing the narcotic drugs mentioned in the act, strictly within the appropriate bounds of a physician's professional practice, and not to extend it to include a sale by a dealer or a distribution intended to cater to the appetite or satisfy the craving of one addicted to the use of the drug. A "prescription" issued for either of the latter purposes protects neither the physician who issues it nor the dealer who knowingly accepts and fills it.—Webb *v.* United States (249 U. S. 96).

It is enough to sustain an indictment that the offense be described with sufficient clearness to show a violation of law and to enable the accused to know the nature and cause of the accusation and to plead the judgment, if one be rendered, in bar of further prosecution for the same offense. If the offense be a statutory one, and intent or knowledge is not made an element of it, the indictment need not charge such knowledge or intent.—United States *v.* Smith (2 Mason, 143); United States *v.* Miller (Fed. Cas. 15775); United States *v.* Jacoby (Fed. Cas. 15462); United States *v.* Ulrici (Fed. Cas. 16594) [opinion by Miller, circuit justice]; United States *v.* Bayaud (16 Fed. 376, 383-4); United States *v.* Jackson (25 Fed. 548, 550); United States *v.* Guthrie (171 Fed. 528, 531); United States *v.* Balint and Randazzo, this day decided, *ante*, p. ——).

It may be admitted that to prescribe a single dose or even a number of doses may not bring a physician within the penalties of the act; but what is here charged is that the defendant physician by means of prescriptions has enabled one, known by him to be an addict, to obtain from a pharmacist the enormous number of doses contained in 150 grains of heroin, 360 grains of morphine, and 210 grains of cocaine. As shown by Wood's United States Dispensatory, a standard work in general use, the ordinary dose of morphine is one-fifth of a grain, of cocaine one-eighth to one-fourth of a grain, of heroin one-sixteenth to one-eighth of a grain By these standards more than 3,000 ordinary doses were placed in the control of King. Undoubtedly doses may be varied to suit different cases as determined by the judgment of a phy-

sician. But the quantities named in the indictment are charged to have been intrusted to a person known by the phsycian to be an addict without restraint upon him in its administration or disposition by anything more than his own weakened and perverted will. Such so-called prescriptions could only result in the gratification of a diseased appetite for these pernicious drugs or result in an unlawful parting with them to others in violation of the act as heretofore interpreted in this court within the principles laid down in the Webb and Jin Fuey Moy cases, *supra*.

We hold that the acts charged in the indictment constituted an offense within the terms and meaning of the act. The judgment of the District Court to the contrary should be reversed.

Mr. Justice HOLMES, Mr. Justice MCREYNOLDS, and Mr. Justice BRANDEIS, dissenting.

DEATHS DURING WEEK ENDED JULY 29, 1922.

Summary of information received by telegraph from industrial insurance companies for week ended July 29, 1922, and corresponding week, 1921. (From the Weekly Health Index, August 1, 1922, issued by the Bureau of the Census, Department of Commerce.)

	Week ended July 29, 1922.	Corresponding week, 1921.
Policies in force	49,733,524	47,262,257
Number of death claims	7,533	7,261
Death claims per 1,000 policies in force, annual rate	7.9	8.0

Deaths from all causes in certain large cities of the United States during the week ended July 29, 1922, infant mortality, annual death rate, and comparison with corresponding week of 1921. (From the Weekly Health Index, August 1, 1922, issued by the Bureau of the Census, Department of Commerce.)

City.	Estimated population July 1, 1922.	Week ended July 29, 1922.		Annual death rate per 1,000, corresponding week, 1921.	Deaths under 1 year.		Infant mortality rate, week ended July 29, 1922.[2]
		Total deaths.	Death rate.[1]		Week ended July 29, 1922.	Corresponding week, 1921.	
Total	27,860,666	5,529	10.3	11.3	881	1,035	.....
Akron, Ohio	[3] 208,435	19	4.8	4.3	5	4	53
Albany, N. Y.	116,223	25	11.2	12.7	1	2	22
Atlanta, Ga.	220,047	64	15.2	15.8	10	15	.....
Baltimore, Md.	762,222	212	14.5	13.5	63	37	177
Birmingham, Ala.	191,017	41	11.2	16.8	3	12	.....
Boston, Mass.	764,017	152	10.4	14.0	23	29	62
Bridgeport, Conn.	[3] 143,555	33	12.0	8.3	5	4	62
Buffalo, N. Y.	528,163	110	10.9	10.7	21	27	83
Cambridge, Mass.	110,944	31	14.6	13.2	5	2	91
Camden, N. J.	121,915	23	9.8	7.4	0	4	0
Chicago, Ill.	2,833,288	494	9.1	10.2	70	92	.....
Cincinnati, Ohio	404,865	100	12.9	12.7	6	20	40
Cleveland, Ohio	854,003	121	7.4	10.7	19	24	49
Columbus, Ohio	253,455	49	10.1	11.7	4	9	42
Dallas, Tex.	171,974	32	9.7	12.3	9	4	.....
Dayton, Ohio	161,824	30	9.7	9.9	7	9	119
Denver, Colo.	267,591	54	10.5	10.7	6	7	.....
Detroit, Mich.	[3] 993,678	183	9.6	9.5	34	51	65
Fall River, Mass.	120,790	40	17.3	14.3	8	9	112
Forth Worth, Tex.	114,717	28	12.7	.....	5	.....	.....
Grand Rapids, Mich.	143,572	16	5.8	10.0	1	5	17
Houston, Tex.	150,087	30	10.4	8.7	4	3	.....
Indianapolis, Ind.	333,257	90	14.1	10.4	15	7	114
Jersey City, N. J.	305,911	54	9.2	12.9	14	28	89
Kansas City, Kans.	113,801	29	13.3	11.0	5	3	116
Kansas City, Mo.	343,988	90	13.6	15.2	16	22	.....
Los Angeles, Calif.	634,866	158	13.0	10.6	20	18	83
Louisville, Ky.	236,877	52	11.4	16.6	7	18	76
Lowell, Mass.	114,423	30	13.7	15.6	7	11	118